

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ASSURED PARTNERS OF
WASHINGTON, LLC,

Plaintiff,

v.

MARK ACARREGUI and ALLIANT
INSURANCE SERVICES, INC.,

Defendants.

Case No. 2:20-cv-00290 BJR

**STIPULATED
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action may involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged that the producing party reasonably and in good faith believes
4 contain: non-public marketing, technical, research, commercial, financial, or trade secret
5 information that the producing party has maintained as confidential or secret; non-public customer
6 information maintained by the producing party as confidential or secret; information prohibited
7 from disclosure by statute or contract; personal identity information; or other information that, if
8 disclosed, could be detrimental to that party’s business or the business of any of that party’s
9 customers.

10 3. “ATTORNEYS’ EYES ONLY” MATERIAL

11 “Attorneys’ Eyes Only” material means information that the producing party reasonably
12 and in good faith believes is of such a nature and character that disclosure of such information to
13 the receiving party will be harmful to the producing party or to its business or will provide the
14 receiving party a competitive advantage over the producing party, or is information that is so highly
15 sensitive and private to individuals that disclosure of such information could be harmful to those
16 individuals’ personal lives.

17 4. SCOPE

18 The protections conferred by this agreement cover not only confidential and attorneys’ eyes
19 only material (as defined above), but also (1) any information copied or extracted from confidential
20 or attorneys’ eyes only material; (2) all copies, excerpts, summaries, or compilations of
21 confidential or attorneys’ eyes only material; and (3) any testimony, conversations, or
22 presentations by parties or their counsel that might reveal confidential or attorneys’ eyes only
23 material.

24 However, the protections conferred by this agreement do not cover information that is in
25 the public domain or becomes part of the public domain through trial or other lawful means.

1 5. ACCESS TO AND USE OF CONFIDENTIAL AND ATTORNEYS' EYES ONLY
2 MATERIAL

3 5.1 Basic Principles. A receiving party may use confidential and attorneys' eyes only
4 material that is disclosed or produced by another party or by a non-party in connection with this
5 case only for prosecuting, defending, or attempting to settle this litigation. Confidential and
6 attorneys' eyes only material may be disclosed only to the categories of persons and under the
7 conditions described in this agreement. Confidential and attorneys' eyes only material must be
8 stored and maintained by a receiving party at a location and in a secure manner that ensures that
9 access is limited to the persons authorized under this agreement.

10 5.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
11 by the court or permitted in writing by the designating party, a receiving party may disclose any
12 confidential material only to:

13 (a) the receiving party's counsel of record in this action, as well as employees
14 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

15 (b) Defendant Acarregui and the officers, directors, and employees (including
16 in-house counsel) of the receiving party to whom disclosure is reasonably necessary for this
17 litigation, unless a particular document or material produced is for Attorneys' Eyes Only and is so
18 designated;

19 (c) experts and consultants to whom disclosure is reasonably necessary for this
20 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) copy or imaging services retained by counsel to assist in the duplication of
23 confidential material, provided that counsel for the party retaining the copy or imaging service
24 instructs the service not to disclose any confidential material to third parties and to immediately
25 return all originals and copies of any confidential material;

26 (f) during their depositions, witnesses in the action to whom disclosure is
reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"

1 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
2 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
3 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
4 under this agreement;

5 (g) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information.

7 5.3 Disclosure of "ATTORNEYS' EYES ONLY" Information or Items: Unless
8 otherwise ordered by the court or permitted in writing by the designating party, a receiving party
9 may disclose any attorneys' eyes only material only to:

10 (a) the receiving party's outside counsel of record in this action as well as
11 employees of such counsel of record to whom it is reasonably necessary to disclose the information
12 for this litigation;

13 (b) experts and consultants to whom disclosure is reasonably necessary for this
14 litigation and who have signed the "Acknowledgement and Agreement to Be Bound" (Exhibit A);

15 (c) the court, court personnel, and court reporters and their staff;

16 (d) copy or imaging services retained by counsel of record to assist in the
17 duplication of attorneys' eyes only material, provided that counsel for the party retaining the copy
18 or imaging service instructs the service not to disclose any attorneys' eyes only material to third
19 parties and to immediately return all originals and copies of any attorneys' eyes only material;

20 (e) during their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary and who have signed the "Acknowledgement and Agreement to Be Bound"
22 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
23 transcribed deposition testimony or exhibits to depositions that reveal attorneys' eyes only material
24 must be separately bound by the court reporter and may not be disclosed to anyone except as
25 permitted under this agreement;

1 (f) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information;

3 (g) two designated in-house counsel personnel of Alliant and Assured.

4 5.4 Filing Confidential and Attorneys' Eyes Only Material. Before filing confidential
5 or attorneys' eyes only material or discussing or referencing such material in court filings, the
6 filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A),
7 to determine whether the designating party will remove the confidential or attorneys' eyes only
8 designation, whether the document can be redacted, or whether a motion to seal or stipulation and
9 proposed order is warranted. During the meet and confer process, the designating party must
10 identify the basis for sealing the specific confidential or attorneys' eyes only information at issue,
11 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
12 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
13 the standards that will be applied when a party seeks permission from the court to file material
14 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
15 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
16 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
17 the strong presumption of public access to the Court's files.

18 6. DESIGNATING PROTECTED MATERIAL

19 6.1 Exercise of Restraint and Care in Designating Material for Protection. All business
20 records produced by any party may be used only for purposes of this litigation, and may not be
21 used or disclosed publicly except in relation to this lawsuit

22 Each party or non-party that designates information or items for protection under this
23 agreement must take care to limit any such designation to specific material that qualifies under the
24 appropriate standards.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
26 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to

unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

6.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (*see, e.g.*, second paragraph of section 6.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" or phrase "ATTORNEYS' EYES ONLY" to each page that contains confidential material.

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL" or phrase "ATTORNEYS' EYES ONLY."

6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a

1 designation, the receiving party must make reasonable efforts to ensure that the material is treated
2 in accordance with the provisions of this agreement.

3 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 7.1 Timing of Challenges. Any party or non-party may challenge a designation of
5 confidentiality or attorneys' eyes only at any time. Unless a prompt challenge to a designating
6 party's confidentiality or attorneys' eyes only designation is necessary to avoid foreseeable,
7 substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the
8 litigation, a party does not waive its right to challenge a confidentiality or attorneys' eyes only
9 designation by electing not to mount a challenge promptly after the original designation is
10 disclosed.

11 7.2 Meet and Confer. The parties (and non-parties, to the extent applicable) must make
12 every attempt to resolve any dispute regarding confidential and attorneys' eyes only designations
13 without court involvement. Any motion regarding confidential or attorneys' eyes only designations
14 or for a protective order must include a certification, in the motion or in a declaration or affidavit,
15 that the movant has engaged in a good faith meet and confer conference with other affected parties
16 in an effort to resolve the dispute without court action. The certification must list the date, manner,
17 and participants to the conference. A good faith effort to confer requires a face-to-face meeting or
18 a telephone conference.

19 7.3 Judicial Intervention. If the parties (or non-parties, to the extent applicable) cannot
20 resolve a challenge without court intervention, the designating party may file and serve a motion
21 to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g),
22 if applicable). The burden of persuasion in any such motion shall be on the designating party.
23 Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose
24 unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions.
25 All parties (and non-parties, to the extent applicable) shall continue to maintain the material in
26 question as confidential until the court rules on the challenge.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
5 “ATTORNEYS’ EYES ONLY,” that party must:

6 (a) promptly notify the designating party in writing and include a copy of the
7 subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena or order is
10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by
12 the designating party whose confidential material may be affected.

13 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
15 or attorneys’ eyes only material to any person or in any circumstance not authorized under this
16 agreement, the receiving party must immediately (a) notify in writing the designating party of the
17 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected
18 material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
19 terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment
20 and Agreement to Be Bound” that is attached hereto as Exhibit A.

21 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
22 MATERIAL

23 When a producing party gives notice to receiving parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
26 is not intended to modify whatever procedure may be established in an e-discovery order or

1 agreement that provides for production without prior privilege review. The parties agree to the
2 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

3 11. NO ADMISSION; NO PREJUDICE

4 Entering into this Stipulated Protective Order or agreeing to and/or producing or receiving
5 Confidential or Attorneys' Eyes Only material or otherwise complying with the terms of this
6 Stipulated Protective Order, shall not:

7 (a) prejudice in any way the rights of any party to (i) seek production of documents or
8 information it considers subject to discovery, or (ii) object to the production of documents or
9 information it considers not subject to discovery;

10 (b) operate as an admission by any party that any particular material, whether or not
11 designated as Confidential or Attorneys' Eyes Only, contains or reflects trade secrets or any other
12 type of confidential or proprietary information under the law;

13 (c) prejudice in any way the rights of any party to petition the Court for a further
14 protective order relating to any purportedly Confidential or Attorneys' Eyes Only information;

15 (d) prejudice in any way the rights of any party to object to the relevance, authenticity,
16 use, or admissibility into evidence of any document, testimony, or other evidence subject to this
17 Stipulated Protective Order;

18 (e) preclude any party from objecting to discovery that it believes to be otherwise
19 improper; or

20 (f) operate as a waiver of any attorney-client, work product, business strategy, trade
21 secret, or other privilege or protection.

22 12. REMOVAL OF DESIGNATIONS FROM TRIAL EXHIBITS

23 Any documents labeled confidential or attorneys' eyes only pursuant to this Stipulated
24 Protective Order shall have the label removed before such documents are shown to a jury as trial
25 exhibits or submitted into evidence in connection with trial.

13. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: March 27, 2020

DATED: March 27, 2020

/s/ Helen M. McFarland

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Alliant Insurance Services, Inc.***

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
4 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
5 documents, including the attorney-client privilege, attorney work-product protection, or any other
6 privilege or protection recognized by law.

7 DATED this 30th day of March, 2020.

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9 The Honorable Barbara J. Rothstein
10 United States District Court Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington in the case of
7 “*AssuredPartners of Washington, LLC v. Mark Acarregui and Alliant Insurance Services, Inc.*,”
8 Case No. 2:20-cv-00290 BJR. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
11 not disclose in any manner any information or item that is subject to this Stipulated Protective
12 Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____